IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

S.B. Criminal Revision Petition No.25/2007.
(Smt. Anita Vs. State of Rajasthan & Another)

DATE OF ORDER : 27th April, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. M.K. Garg for petitioner.
Mr. H.S. Sandhu for the non-petitioner.

BY THE COURT :

In this revision petition, the petitioner seeks to challenge order dated 15.11.2006 passd by the Sessions Judge, Sriganganagar (hereinafter, 'the revisional Court') in Criminal Revision No.186/2006, whereby the learned revisional Court set aside the order dated 02.09.2006 passed by the trial Court taking cognizance upon the application filed under Section 319, Cr.P.C. against non-petitioner No.2 on the ground of limitation.

The petitioner's case in the present revision petition is that though the learned trial Court considered merit of the case and evidence on record for takingt cognizance upon application filed under Section 319, Cr.P.C., the revisional Court has rejected the application only on the ground of limitation while taking into account the provisions of Section 468 of the Code of Criminal Procedure whereunder limitation has been provided.

It is submitted that initially complaint was filed by the complainant under Section 153, Cr.P.C. before the Judl. Magistrate, Sriganganagar and the same was sent to the police for investigation. The Officer in-charge of the Police Station jawahar Nagar registered FIR No.150/2002 for offences under Sections 406, 498A, 354, 377 and 323, I.P.C. After investigation, challan was filed before the Court against Pramod Kumar, Rukmani Devi, Ram Kumar @ Ram pratap for the aforesaid offences. After filing of the challan against these persons, charges were framed and trial in the case commenced.

At the trial, statement of p.W.-1 Smt. Anita, complainant was recorded and, on the basis of that statement, wherein, there was specific allegation levelled against non-petitioner No.2 sister-in-law of the petitioner with regard to committing offence under Section 498A, I.p.C. but the revisional Court rejected the application only on the ground of limitation. It is observed in para 9 of the impugned order that the marriage of the complainant was solemnised on 07.12.2000 and, just after 7 days of the marriage, on 14/15-12-2000 the alleged demand of dowry was made by inter alia the non-petitioner No.2. It is further observed in the impugned order that no cognizance has been taken in this case within three years of the incident though the petitioner has filed the complaint on 16.04.2002, but the learned trial Court took cognizance against non-petitioner No.2 on 02.09.2006; meaning thereby, the revisional Court has treated the date of the incident as having occurred on 14/15-12-2000 and observed that within three years of that date cognizance was to be taken

but the learned trial Court has taken cognizance on 02.09.2006 and, therefore, it is time-barred.

Learned counsel for the complainant submitted that the order passed by the revisional Court is totally erroneous because the trial Court has passed order on the application moved under Section 319, Cr.P.C. on the basis of evidence coming on record. It is submitted that the learned revisional Court has quashed the order of taking cognizance only on the ground of limitation which is stated in para 9 of the impugned order. In support of his submission, learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in the case of Arun Vyas Vs. Anita Vyas, reported in 1999 Cr.L.R. (SC) 392 and another judgment of this Court reported in 2005 (2) Cr.L.R. (Raj.) and submitted that if any delay on the part of the Court occurred then, in that event, for the purpose of limitation, the party complainant could not be found fault with. It is contended by learned counsel for the petitioner that as and when the statement of the complainant P.W.-1 Smt. Anita was recorded, the application for taking cognizance was filed, therefore, there was no error in the order of the trial Court but the learned revisional Court has set aside the order passed by the trial Court on the ground of limitation which was not attracted in the present case at the time of taking cognizance on the application filed under Section 319, Cr.P.C. Learned counsel for the petitioner further placed reliance upon the judgment of the Supreme Court, reported in 2004 SCC (Cri.) 39 and submitted that the revisional Court has committed an error of law in not considering the provision of

Section 473, Cr.P.C. whereunder it is specifically mentioned that limitation can be condoned and extension of period of limitation can be considered if it is satisfied on the facts and circumstances of the case that the delay is properly explained or that it is necessary so to do in the interest of justice.

Section 473 of the Code of Criminal Procedure reads as under :

> "**473.Extension of period of limitation in certain cases**.- Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that is necessary so to do in the interests of justice."

It is further contended by learned counsel for the petitioner that the learned revisional Court was under obligation to consider Section 473, Cr.P.C. for extension of the period and for the same it is not necessary to file application by the complainant. It is argued that it is the duty of the Court to take into account the facts and circumstances of the case for extension of the period. It is further submitted that as observed vide para 9 of the impugned order the complaint was filed within limitation on 16.04.2002 but, somehow, challan was not filed against non-petitioner No.2 though evidence of committing the offence by non-petitioner No.2 was there; but, after recording statement of complainant Smt. Anita, P.W.-1 when application under Section 319, Cr.P.C. was filed the Court passed order for taking cognizance. It is submitted that statement of Smt. Anita, P.W.-1 was recorded on 16.06.2006 and she preferred application under Section 319, Cr.P.C. on 20.07.2006 without any loss of time and there was material against non-petitioner No.2, therefore, cognizance was

rightly taken by the learned Magistrate.

Learned counsel for non-petitioner No.2 vehemently contended that there is no material against the non-petitioner for taking cognizance of the offence against her upon the application filed by the complainant under Section 319, cr.P.C. The learned revisional Court has rightly passed order for quashing the order of the trial Court on the ground of limitation because the question of limitation in criminal trial cannot be lost sight of for substantial justice. It is urged by learned counsel for the non-petitioner that in the case cited by learned counsel for petitioner in support of his submission reported in 1999 Cr.L.R. (SC) 392, it is ordered that the matter with regard to limitation is required to be examined as to whether the delay has been properly explained and, so also, whether it is necessary to do so in the interest of justice. According to learned counsel for the non-petitioner it is thus manifest that even if this Court comes to the conclusion that the impugned order requires to be set aside then also the case will have to be remanded to the trial Court because the question of limitation was not at all considered by the trial Court while passing order on the application filed under Section 319, Cr.P.C. and, therefore, there is illegality in the order of the trial Court.

I have carefully perused the impugned order and, so also, the material on record.

In my opinion, the revisional Court has lost sight of the material question of extension of limitation and also failed to consider the provisions of Section 473, Cr.P.C. which, in the facts and circumstances

of the case, required to be taken into account before passing the impugned order. It is obvious that the complaint was filed within limitation and the occasion for filing application under Section 319, Cr.P.C. arose only after recording statement of the complainant P.W.-1 Smt. Anita by the trial Court on 16.06.2006. The revisional Court was not justified to upset the order of cognizance passed by the trial Court on the ground of limitation without considering the necessity in the case to take into account facts and circumstances as to whether the provisions of Section 473, Cr.P.C. required to be applied or not in the case. Therefore, the order impugned passed by the revisional Court cannot be sustained. The matter requires to be remitted to the revisional Court.

Consequently, the impugned order dated 15.11.2006 passed by the revisional Court is set aside and the case is remanded to the revisional Court for decision afresh keeping in mind observations contained hereinabove with regard to the provisions of Section 473, Cr.P.C. while considering the question of limitation under Section 468, Cr.P.C.

(Gopal Krishan Vyas) J.

Ojha, a.